

RULEMAKING NOTICE FORMNotice Number **2016-231**Rule Number **He-W 648.02, He-W 648.03, He-W 848.02
& He-W 848.03**

1. Agency Name & Address:

**Dept. of Health and Human Services
Division of Family Assistance
129 Pleasant St, Brown Bldg.
Concord, NH 03301**

2. RSA Authority: **RSA 167:3-c, I & II-b**

3. Federal Authority: _____

4. Type of Action:

Adoption **X**

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment **X**5. Short Title: **Expiring Rules Related to Eligibility for Adult Categories of Assistance
and**

**Medical Assistance When Living in a Residential Care Facility or a
Community Residence**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-W 648.02 and He-W 648.03 related to eligibility for adult categories of assistance when living in a residential care facility or community residence. These rules are scheduled to expire on February 1, 2017 but are subject to extension pursuant to RSA 541-A:14-a.

He-W 648.02 describes the eligibility requirements for adult categories of financial assistance for individuals living in residential care facilities. The Department is proposing to remove references in He-W 648.02 concerning the determination of eligibility related to medical assistance because these provisions are moving to He-W 800.

He-W 648.03 describes the eligibility requirements for adult categories of financial assistance for individuals residing in community residences. The Department is proposing to remove references in He-W 648.03 concerning the determination of eligibility related to medical assistance because these provisions are moving to He-W 800. The Department is also proposing to update citations found in this rule related to the definition of "community residences" and "family residences" to align with the definitions created by the Division of Community Based Care Services.

The Department also proposes to adopt He-W 848.02 and He-W 848.03 which state the medical assistance requirements renumbered from He-W 648.02 and He-W 648.03, but with the following changes to these rules:

Proposed He-W 848.02 describes the financial eligibility requirements for the adult categories of medical assistance for individuals residing in residential care facilities. The Department is proposing to delete reference to "financial assistance" currently in He-W 648.02(a) and delete paragraph (d) in He-W 648.02 because these requirements will be readopted under the rules in He-W 600, where all the rules associated with eligibility for the financial assistance programs are located;

Proposed He-W 848.03 describes the financial eligibility requirements for the adult categories of medical assistance for individuals residing in community residences. The Department is proposing to delete reference to “financial assistance” currently in He-W 648.03(a) and delete paragraph (d) in He-W 648.03 because these requirements will be readopted under the rules in He-W 600, where all the rules associated with eligibility for the financial assistance programs are located. In addition, the Department is also proposing to update citations related to the definition of “community residences” and “family residences” to better align with the definitions created by the Division of Community Based Care Services.

6. (b) Brief description of the groups affected:

Groups affected include adults living in residential care facilities or community residences.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>Rule</u>	<u>Statute</u>
He-W 648.02	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g
He-W 648.03	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g
He-W 848.02	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g
He-W 848.03	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
 Address: **Dept. of Health & Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant Street, Brown Bldg. E-mail: **catherine.bernhard@dhhs.nh.gov**
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, January 19, 2017**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, January 12, 2017 at 9:00 AM**

Place: **[DHHS, Brown Bldg., Room 232, 129 Pleasant St., Concord, NH 03301](#)**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **16:247**, dated **12-1-16**

- 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact of state funds:

42 USC 1382g was enacted to ensure that states maintain minimum supplementary payment levels for individuals on social security income, including those residing in residential care facilities, community residences, and family residences, as implemented in He-W 648.02(e) and He-W 648.03(e). However, there is no effect on state funds associated with the proposed rules.

3. Cost and benefits of the proposed rule(s):

Proposed He-W 648.02 and 648.03 remove references to medical assistance. These references will instead be located in proposed He-W 848.02 and 848.03, as these rules will be specific to medical assistance. These changes will result in no fiscal impact.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not create a new program or responsibility, expand or modify an existing program or responsibility, or mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-W 648.02, effective 2-1-09 (Document #9364), to read as follows:He-W 648.02 Residential Care Facilities.

(a) Individuals living in residential care facilities, as described in RSA 151:2, I(e), shall meet all general, technical, categorical, and financial requirements for adult category financial ~~and medical~~ assistance, in addition to the requirements below.

(b) Individuals living in residential care facilities shall be entitled to a different standard of need than individuals residing in independent living arrangements when the residential care facility is licensed by the department as meeting the standards for the care of residential care facility residents.

(c) Financial eligibility for individuals in residential care facilities shall be determined as an assistance group size of one.

(d) If an individual is determined eligible, financial assistance shall be provided directly to the individual, not to the operator of the residential care facility.

(e) The standard of need for an individual in a residential care facility shall be adjusted annually as specified in He-W 648.04.

Readopt with amendment He-W 648.03, effective 2-1-09 (Document #9364), to read as follows:He-W 648.03 Community Residences.

(a) Individuals living in community residences, as defined in ~~He-W 601.02(e)~~ He-M 1001.02(k), shall meet all general, technical, categorical, and financial requirements for adult category financial ~~and medical~~ assistance, in addition to the requirements below.

(b) Individuals living in community residences shall be entitled to a different standard of need than individuals residing in independent living arrangements when:

(1) The community residence is certified or licensed by the department;

(2) The individual has been determined appropriate for community residence care by a division of developmental services area agency case manager; and

(3) The individual has been placed in a community residence.

(c) Financial eligibility for individuals in community residences shall be determined as an assistance group size of one.

(d) If an individual is determined eligible, financial assistance shall be provided directly to the individual, not to the operator of the community residence.

(e) The standard of need shall be adjusted annually, as specified in He-W 648.04, for individuals living in ~~a~~:

(1) Community residences, as defined in ~~He-W 601.02(e)~~ He-M 1001.02(k); and

(2) Family residences, as defined in He-M 1001.02(k) and He-M 1001.02(~~p~~).

Adopt He-W 848.02 to read as follows:

He-W 848.02 Residential Care Facilities.

(a) Individuals living in residential care facilities, as described in RSA 151:2, I(e), shall meet all general, technical, categorical, and financial requirements for adult category medical assistance, in addition to the requirements below.

(b) Individuals living in residential care facilities shall be entitled to a different standard of need than individuals residing in independent living arrangements when the residential care facility is licensed by the department as meeting the standards for the care of residential care facility residents.

(c) Financial eligibility for individuals in residential care facilities shall be determined as an assistance group size of one.

(d) The standard of need for an individual in a residential care facility shall be adjusted annually as specified in He-W 648.04.

Adopt He-W 848.03 to read as follows:

He-W 848.03 Community Residences.

(a) Individuals living in community residences, as defined in He-M 1001.02(k), shall meet all general, technical, categorical, and financial requirements for adult category medical assistance, in addition to the requirements below.

(b) Individuals living in community residences shall be entitled to a different standard of need than individuals residing in independent living arrangements when:

(1) The community residence is certified or licensed by the department;

(2) The individual has been determined appropriate for community residence care by a division of developmental services area agency case manager; and

(3) The individual has been placed in a community residence.

(c) Financial eligibility for individuals in community residences shall be determined as an assistance group size of one.

(d) The standard of need shall be adjusted annually, as specified in He-W 648.04, for individuals living in:

(1) Community residences, as defined in He-M 1001.02(k); and

(2) Family residences, as defined in He-M 1001.02(k) and He-M 1001.02(p).

APPENDIX

<u>Rule</u>	<u>Statute</u>
He-W 648.02	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g
He-W 648.03	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g
He-W 848.02	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g
He-W 848.03	RSA 167:3-c, II-b; RSA 167:7, I-a; RSA 167:27-c; 42 USC 1382g